

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL VASQUEZ,

Defendant and Appellant.

2d Crim. No. B231586
(Super. Ct. No. GA079825)
(Los Angeles County)

Manuel Vasquez appeals from a trial court order denying his motion to vacate or withdraw his no contest plea to violating Health and Safety Code section 11359 (possession of marijuana for sale). (Pen. Code,¹ § 1018.) Appellant contends the motion should have been granted on the ground his trial attorney provided constitutionally ineffective assistance by failing to fully advise him of the immigration consequences of his plea. Because appellant did not obtain a certificate of probable cause in accordance with section 1237.5, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

On April 20, 2010, officers responding to a possible burglary call at a residence found a van filled with packages the officers recognized as consistent with

¹ All further undesignated statutory references are to the Penal Code.

narcotics trafficking. Appellant and four other individuals who were present at the scene were detained while a search warrant was obtained for the residence. After a warrant was obtained, marijuana was found inside the residence. It was subsequently determined that the packages in the van contained a total of 14.5 pounds of marijuana.

Appellant was charged by felony complaint with possession of marijuana for sale, and subsequently agreed to enter a no contest plea to the charge. Prior to entering his plea, appellant was advised on the record that "[i]f you're not a citizen of the United States, you will face deportation, exclusion from admission, or denial of naturalization." On his change of plea form, appellant initialed the paragraph entitled "Immigration Consequences" that states: "I understand that if I am not a citizen of the United States, I must expect my plea of guilty or no contest will result in my deportation, exclusion from admission or reentry to the United States, and denial of naturalization and amnesty." He also signed and dated the verification indicating that he had discussed each of the paragraphs with his attorney and that his initials meant "that I have read, understand and agree with what is stated in the paragraph." Appellant's attorney signed and dated the section verifying that he had "explained each of the defendant's rights to the defendant" and had advised him of "the consequences of the plea."

Imposition of judgment was suspended, and appellant was placed on three years formal probation with terms and conditions including that he serve 270 days in county jail. Appellant subsequently retained new counsel and filed a motion to vacate or withdraw his plea pursuant to section 1018, on the ground that his prior attorney had provided ineffective assistance by failing to fully advise him of his plea's immigration consequences. The motion was denied on January 28, 2011.²

² Prior to filing the motion that is the subject of this appeal, appellant filed a petition for a writ of habeas corpus that is virtually identical in substance. In denying the petition on the merits, the court noted among other things that the record of the plea proceedings reflected trial counsel's statement that appellant had consulted with an immigration attorney.

DISCUSSION

Appellant contends the court should have granted his motion to vacate or withdraw his no contest plea on the ground his trial attorney provided constitutionally ineffective assistance by failing to fully advise him of the immigration consequences of his plea as required under *Padilla v. Kentucky* (2010) 559 U.S. — [130 S.Ct. 1473]. The People respond that the appeal must be dismissed because appellant did not seek or obtain a certificate of probable cause pursuant to section 1237.5. We agree with the People.

Under section 1237.5 and California Rules of Court, rule 8.304(b),³ a defendant seeking to appeal after entering a guilty or no contest plea generally must first obtain a certificate of probable cause. (*People v. Panizzon* (1996) 13 Cal.4th 68, 74 (*Panizzon*).) A certificate of probable cause is unnecessary only if the appeal is based on "[g]rounds that arose after entry of the plea and do not affect the plea's validity." (Rule 8.304(b)(4)(B).) Accordingly, a defendant who appeals after pleading guilty or no contest may, without obtaining a certificate, raise "issues regarding proceedings held subsequent to the plea for the purpose of determining the degree of the crime and the penalty to be imposed." (*Panizzon*, at p. 74; accord, *People v. Lloyd* (1998) 17 Cal.4th 658, 663-664.) In determining whether an appeal may proceed without a certificate of probable cause, courts "look to the substance of the appeal: 'the crucial issue is what the defendant is challenging, not the time or manner in which the challenge is made.' [Citation.] Hence, the critical inquiry is whether a challenge . . . is *in substance* a challenge to the validity of the plea, thus rendering the appeal subject to the requirements of section 1237.5." (*Panizzon*, at p. 76; *People v. Placencia* (2011) 194 Cal.App.4th 489, 493-494.)

When a defendant files a motion to withdraw his plea on grounds that challenge the validity of the plea, he or she may not appeal the denial of the motion without obtaining a certificate of probable cause. (*People v. Ribero* (1971) 4 Cal.3d 55,

³ All further references to rules are to the California Rules of Court.

63-64, superseded by statute on other grounds as stated in *In re Chavez* (2003) 30 Cal.4th 643, 655-656; see also *People v. Placencia, supra*, 194 Cal.App.4th at pp. 493-494.) It is undisputed that appellant's motion constitutes such a challenge. The fact that appellant claims he entered the plea as the result of ineffective assistance of counsel does not alter this conclusion. (*People v. Johnson* (2009) 47 Cal.4th 668, 683–685.)⁴ Accordingly, appellant's failure to obtain a certificate of probable cause compels the dismissal of his appeal.

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

COFFEE, J.*

⁴ To the extent appellant purports to have brought a nonstatutory motion to vacate his plea that is separate and distinct from his motion to withdraw the plea pursuant to section 1018, no such remedy is available. A nonstatutory motion to vacate a judgment is the legal equivalent of a petition for a writ of error *coram nobis*. (*People v. Kim* (2009) 45 Cal.4th 1078, 1096.) Allegations that a defendant would not have pled guilty had he or she known the possible immigration consequences or the possibility of entering a plea to a nondeportable offense do not state grounds for *coram nobis* relief. (*Id.* at pp. 1102–1103.)

* Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Steven P. Sanora, Judge
Superior Court County of Los Angeles

Karlin & Karlin, Marc A. Karlin, for Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven E. Mercer, Sonya Roth, Deputy Attorneys General, for Respondent.